

MORGAN & MORGAN[®]

----- *Attorneys At Law* -----

600 N. PINE ISLAND ROAD
SUITE 400
PLANTATION, FL 33324
(954) 318-0268
FAX: (954) 327-3013

June 4, 2018

Via ECF Filing

David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

RE: Jorgie Franks v. National Labor Relations Board; No. 16-10644-FF

Dear Mr. Smith:

The undersigned represents Petitioner, Jorgie Franks (“Franks”) in the above-referenced case. I write to address the effect of the Supreme Court’s decision in *Epic*, per the Court’s Order dated May 23, 2018. In short, while *Epic* is binding on the class waiver issue, neither of the two other issues Franks presented for review are effected by *Epic*. Thus, the final two issues should be resolved in Franks’ favor for the reasons argued in Petitioner’s Brief and Reply Brief.

Petitioner presented the following three issues to the Court:

1. Whether the National Labor Relations Board properly held that that Samsung Electronics America, Inc.’s arbitration agreement, which bars employees from bringing wage claims collectively, is an illegal contract and therefore may be invalidated under the Federal Arbitration Act’s saving clause because it interferes with employees’ right to act collectively for their mutual aid and protection in violation of the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*
2. Whether the National Labor Relations Board properly held that Samsung Electronics America, Inc. unlawfully interrogated Jorgie Franks about her protected concerted activity on both September 3 and October 4, 2014.
3. Whether the National Labor Relations Board erred in reversing the Administrative Law Judge’s finding that Samsung Electronics America, Inc. unlawfully instructed Jorgie Franks not to discuss her lawsuit with other employees.

While *Epic* addressed the legality of class waivers in arbitration agreements its holding was limited to that issue. As such, the act of one employee speaking to another regarding their

wages clearly remains a protected activity under the National Labor Relations Act (NLRA), notwithstanding *Epic*. Therefore, Samsung Electronics America, Inc.'s acts against Frank—committed in retaliation because she discussed her wages with other employees—remains a clear violation of the NLRA.

For these reasons, the Court should find that the NLRB properly held that Samsung unlawfully interrogated Franks about her protected activity on September 3 and October 4, 2014, and that the NLRB erred in reversing the ALJ's finding that Samsung unlawfully instructed Franks not to discuss her wages with other employees.

Respectfully submitted,

/s/ Andrew R. Frisch

Andrew R. Frisch

Attorney for Petitioner Jorgie Franks

cc: Counsel of Record (via ECF Filing)